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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Al Kelley
Mayor, City of Millbrook
Post Office Box 630
Millbrook, Alabama 36054

MODIFIED

Zoning – Pre-zoning – Annexation –
Municipalities – Elmore County

Pursuant to section 11-52-85(b) of the Code of Alabama, the City of Millbrook is not required to provide a requested pre-zoning statement to a property owner who does not reside in the affected area in a dwelling or otherwise continuously or on a regular basis so as to demonstrate a minimal level of permanency of physical presence.

Dear Mayor Kelley:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Millbrook.

QUESTION

May a person who owns property abutting the corporate limits and in the police jurisdiction of the City of Millbrook request pre-zoning under section 11-52-85(b) of the Code of Alabama when said owner does not reside on the property?

FACTS AND ANALYSIS

In your inquiry, you informed this Office that an individual owns property just outside the corporate limits of Millbrook. Neither the individual nor anyone else resides on the property; therefore, the property is not deemed to be the domicile of any known person herein involved as the property is undeveloped and lacks any dwelling place or structure of any kind.

Section 11-52-70 of the Code of Alabama authorizes municipalities to establish zoning districts and to provide for the “kind, character and use of structures and improvements that may be erected or made” in each of these districts. ALA. CODE § 11-52-70 (2015). Section 11-52-85 of the Code of Alabama authorizes a municipality to pre-zone territory proposed for annexation into the corporate limits of the municipality prior to the effective date of the annexation. ALA. CODE § 11-52-85 (2015). Section 11-52-85(b) states as follows:

(b) A municipality which exercises its authority to zone territory within its corporate limits shall pre-zone territory as provided in subsection (a) and issue a statement of zoning classification to an affected property owner *if the individual property owner residing in the area to be annexed* requests in writing that a zoning determination be made pursuant to this section prior to being annexed.

ALA. CODE § 11-52-85(b) (2015) (emphasis added). This notification-upon-request requirement attaches to the municipality’s authority to pre-zone territory that is to be annexed. ALA. CODE § 11-52-85(a) (2015).

The issue, therefore, is how to construe the term “residing” as used in subsection (b). Although “residing” is not defined by the relevant statute, “residence” is defined elsewhere in the Code of Alabama. The sex offender registration laws define that term as “the places where a person resides, sleeps, habitually lives, or is stationed with regularity, regardless of whether the person declares or characterizes such place as a residence.” ALA. CODE § 15-20A-4(20) (Supp. 2015). And if a person does not have a fixed residence, then “residence means a description of the locations where the person is stationed regularly, day or night, including any mobile or transitory living quarters or locations that have no specific mailing or street address.” *Id.*

“Residence” may also be defined as “bodily presence as an inhabitant in a given place. . . .” BLACK’S LAW DICTIONARY 1502 (10th ed. 2014). And “reside” is defined as “to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time. . . .” BLACK’S LAW DICTIONARY 1308 (6th ed. 1990). The issue here (as noted by the courts in the past) is that the word “residing” is “an ambiguous, elastic, or relative term, and includes a very temporary, as well as a permanent, abode.” *Crossett v. St. Louis Fire & Marine Ins. Co.*, 289 Ala. 598, 603, 269 So. 2d 869, 873 (1972). “Residence,” however, requires a dwelling place for some period of time with intent of some minimal level of permanency rather than transitory boarding or lodging. *Id.*

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The plain and ordinary meaning of "residing," as used in section 11-52-85(b), would seem to be living in a dwelling or otherwise on the affected property either continuously or on a regular basis so as to demonstrate a minimal level of permanency of physical presence. Therefore, the property owner must, in some minimal form or manner, reside and have an abode, whether mobile or permanent, at the affected property. Again, in this case, there is no structure or dwelling at which the property owner could spend time, dwell, or reside. And without such, it is very unlikely, without proof to the contrary, that someone would be spending a sufficient amount of time living on that piece of property.

Thus, the City of Millbrook is not required to provide the affected property owner with a statement of zoning classification because the owner of the affected property does not reside on the property that is located in the area to be annexed. Stated differently, because the affected property owner does not reside on the property to be annexed, that property owner is not entitled to receive a statement of zoning classification.

CONCLUSION

Pursuant to section 11-52-85(b) of the Code of Alabama, the City of Millbrook is not required to provide a requested pre-zoning statement to a property owner who does not reside in the affected area in a dwelling or otherwise continuously or on a regular basis so as to demonstrate a minimal level of permanency of physical presence.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



G. WARD BEESON, III
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